

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT HENRY,

Petitioner, No. CIV S-94-0916 JKS EFB P

VS.

CHARLES D. MARSHALL,

Respondent. ORDER

Petitioner is a state prisoner seeking a writ of habeas corpus. *See* 28 U.S.C. § 2254. On November 18, 2008, at a hearing on petitioner's motion for substitute counsel and/or to proceed pro se, the court agreed to allow petitioner to proceed pro se in this action, and scheduled an evidentiary hearing to commence on January 27, 2009.

On December 5, 2008, petitioner filed a motion to reschedule the evidentiary hearing.¹

21 On December 9, 2008, respondent filed a notice of non-opposition to petitioner's motion, in
22 which respondent "requests to be heard regarding the setting of any new hearing date and that
23 the schedule for the filing of pre-hearing briefs be adjusted accordingly."

¹ Ironically, the basis of petitioner's motion for substitute counsel and/or to proceed pro se was his frustration with several delays in his case, including his then-attorney's stipulations to continue the evidentiary hearing petitioner now seeks to reschedule.

1 Because evidentiary hearings in habeas cases are to be held “as soon as practicable after
2 giving the attorneys adequate time to investigate and prepare,” the court indicated at the
3 November 18 hearing – and petitioner stated that he understood – that petitioner would not be
4 entitled to any continuances of the evidentiary hearing even though petitioner may have limited
5 access to legal materials and other resources. Rule 8, 28 U.S.C. foll. § 2254. Nonetheless,
6 because petitioner contends that he had no access to his personal property (including his legal
7 materials) or to a law library from November 14, 2008 to December 2, 2008, and because
8 respondent does not oppose petitioner’s motion, it is ORDERED that petitioner’s motion to
9 reschedule the evidentiary hearing is granted. Accordingly, the evidentiary hearing currently
10 scheduled for January 27, 2009, is continued to April 20, 2009, at 9:30 a.m. in Courtroom No.
11 25.² The deadline for respondent to file a brief is continued to January 23, 2009 and the deadline
12 for petitioner to file a response thereto is continued to February 13, 2009.

13 Dated: December 10, 2008.

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15 EDMUND F. BRENNAN
16 UNITED STATES MAGISTRATE JUDGE
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26 ² Respondent’s request that the court hold a hearing in order to schedule a new date for
the evidentiary hearing is denied.